

TITLE 48
MONOPOLIES AND TRADE PRACTICES

CHAPTER 15
IDAHO NONPROFIT HOSPITAL SALE OR CONVERSION ACT

48-1501. LEGISLATIVE FINDINGS AND INTENT. (1) Nonprofit hospitals hold assets in charitable trust, and are dedicated to the specific charitable purposes set forth in the articles of incorporation of the nonprofit corporations or governing papers of the nonprofit entities operating such hospitals. Nonprofit hospitals have a substantial and beneficial effect on the provision of health care to the people of Idaho, providing as part of their charitable mission free or low-cost health care.

(2) The attorney general is entrusted by law to bring actions on behalf of the public in the event of a breach of the charitable trust, pursuant to section [67-1401](#), Idaho Code.

(3) This act shall be cited as the "Nonprofit Hospital Sale or Conversion Act."

[48-1501, added 2000, ch. 314, sec. 1, p. 1054.]

48-1502. DEFINITIONS. As used in this act:

(1) "Hospital" means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than twenty-four (24) hours in any week of two (2) or more nonrelated individuals suffering from illness, disease, injury, deformity, or requiring care because of old age, or a place devoted primarily to providing, for not less than twenty-four (24) hours in any week, of obstetrical or other medical or nursing care for two (2) or more nonrelated individuals.

(2) "Nonprofit hospital" means any hospital, including hospitals owned by corporations, that is organized as a nonprofit concern, however structured or created. The term also includes entities owned, governed or controlled by a nonprofit hospital. The term does not include hospitals which are operated by a governmental unit.

(3) "Nonprofit hospital conversion transaction" means:

(a) The sale, transfer, lease, exchange, optioning, or conveyance of the lesser of thirty million dollars (\$30,000,000) or forty percent (40%) of the assets of a nonprofit hospital to an entity or person other than a nonprofit entity or an entity controlled by the nonprofit hospital; or

(b) The transfer of control or governance of the lesser of thirty million dollars (\$30,000,000) or forty percent (40%) of the assets of a nonprofit hospital to an entity or person other than a nonprofit entity or an entity controlled by the nonprofit hospital.

(c) "Nonprofit hospital conversion transaction" does not include contracts, in the usual course of business, between the nonprofit hospital and another entity:

(i) For the provision of services to the nonprofit hospital;

(ii) For the sale of equipment; or

(iii) For the leasing of space.

(d) Beginning on July 1, 2001, and each July 1 thereafter, the sums of thirty million dollars (\$30,000,000) referenced in subsections (3) (a) and (3) (b) of this section, shall increase or decrease in accordance with the percentage amount change in the hospital services component of

the consumer price index as published by the bureau of labor statistics of the United States department of labor.

(4) "Person" means any individual, partnership, trust, estate, corporation, association, joint venture, joint stock company, insurance company or other organization.

(5) "Charitable trust interest" shall mean those factors specifically listed in section [48-1506](#), Idaho Code.

[48-1502, added 2000, ch. 314, sec. 1, p. 1054.]

48-1503. NOTICE TO THE ATTORNEY GENERAL. (1) Any nonprofit hospital shall be required to provide written notice to the attorney general prior to entering into any nonprofit hospital conversion transaction.

(2) In addition to identifying the parties to the nonprofit hospital conversion transaction and the general terms of the transaction, the notice to the attorney general provided for in this section shall include and contain relevant information related to the review factors set forth in section [48-1506](#), Idaho Code.

(3) This chapter shall not apply to a nonprofit hospital if the attorney general has given the nonprofit hospital a written waiver of this chapter as to the nonprofit hospital conversion transaction.

[48-1503, added 2000, ch. 314, sec. 1, p. 1055.]

48-1504. ATTORNEY GENERAL REVIEW AND WRITTEN OPINION -- TIME PERIODS -- EXTENSION -- DISTRICT COURT REVIEW. (1) No nonprofit hospital conversion transaction may close or be consummated until the time periods, as provided in this section, have expired.

(2) Within ninety (90) days of receipt of a written notice as required by section [48-1503](#), Idaho Code, the attorney general shall review the proposed nonprofit hospital conversion transaction and notify the nonprofit hospital in writing of his opinion. The attorney general shall review the nonprofit hospital conversion transaction to determine if it is in the charitable trust interest. In making his determination, the attorney general shall be guided by the factors set forth in section [48-1506](#), Idaho Code. Upon application by the attorney general, the district court may extend this period for an additional sixty (60) day period, provided the extension is necessary to obtain necessary and relevant information pursuant to section [48-1507](#) (2) or [48-1508](#) (1), Idaho Code.

(3) If the attorney general, in his written opinion, opposes the proposed nonprofit hospital conversion transaction, the parties to the transaction may not close or consummate the transaction for fourteen (14) days after the attorney general's opinion has been issued to allow the attorney general, in his discretion, to file suit seeking to block the transaction.

(4) If the attorney general files a lawsuit seeking to block the nonprofit hospital conversion transaction, the district court shall review, de novo, the transaction to determine if it is in the charitable trust interest. In making this determination, the district court shall use the factors set forth in section [48-1506](#), Idaho Code. Neither a positive nor a negative finding with regard to one (1) or more of the factors listed in section [48-1506](#), Idaho Code, shall necessarily mean that the nonprofit hospital conversion transaction is or is not in the charitable trust interest.

[48-1504, added 2000, ch. 314, sec. 1, p. 1055.]

48-1505. PUBLIC MEETINGS -- NOTICE OF TIME AND PLACE. (1) Prior to issuing any written opinion pursuant to section [48-1504](#), Idaho Code, the attorney general may conduct one (1) or more public meetings, one (1) of which, if held, shall be held in the county where the nonprofit hospital's assets to be transferred are located.

(2) If a party to the intended nonprofit hospital conversion transaction requests the hearing be conducted by a hearing officer outside the attorney general's office, a hearing officer, mutually agreed upon by the parties to the conversion transaction and the attorney general, shall be selected.

(3) At the public meeting, the attorney general or hearing officer shall hear comments from interested persons desiring to make statements regarding the proposed nonprofit hospital conversion transaction.

(4) The attorney general shall cause timely written notice to be provided regarding the time and place of the meeting through publication in one (1) or more newspapers of general circulation in the affected community, to the county board of supervisors, and if applicable, to the city council of the city where the nonprofit hospital's assets to be transferred are located.

(5) If a hearing officer is used, the parties to the nonprofit hospital conversion transaction shall pay the costs of the hearing officer.

[48-1505, added 2000, ch. 314, sec. 1, p. 1056.]

48-1506. NONPROFIT HOSPITAL CONVERSION TRANSACTION REVIEW ELEMENTS. In reviewing a proposed nonprofit hospital conversion transaction, the attorney general (and the district court as necessary and applicable), shall consider:

(1) Whether the nonprofit hospital will receive fair market value for its charitable trust assets;

(2) Whether the fair market value of the nonprofit hospital's assets to be transferred has been affected by the actions of the parties in a manner that improperly causes the fair market value of the assets to decrease;

(3) Whether the proceeds of the proposed nonprofit hospital conversion transaction will be used consistent with the trust under which the assets are held by the nonprofit hospital and whether the proceeds will be controlled as funds independently of the acquiring or related entities;

(4) Whether the governing body of the nonprofit hospital exercised due diligence in deciding to dispose of the nonprofit hospital's assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition;

(5) Whether the nonprofit hospital conversion transaction will result in improper private inurement to any person as set forth in section [48-1511](#), Idaho Code; and

(6) Whether the terms of any management or services contract negotiated in conjunction with the proposed nonprofit hospital conversion transaction are reasonable.

[48-1506, added 2000, ch. 314, sec. 1, p. 1056.]

48-1507. RULES -- AUTHORITY TO ADOPT -- INFORMATION REQUESTS -- CONSEQUENCES OF REFUSAL TO PROVIDE INFORMATION. (1) The attorney general may adopt such rules, pursuant to [chapter 52, title 67](#), Idaho Code, as the attorney general deems appropriate or necessary to implement this chapter.

(2) The attorney general may request that the nonprofit hospital giving notice under section [48-1503](#), Idaho Code, in addition to providing information related to the review factors set forth in section [48-1506](#), Idaho Code, provide other information which the attorney general reasonably deems necessary and relevant to review the nonprofit hospital conversion transaction.

(3) If the nonprofit hospital declines to provide the information requested by the attorney general in subsection (2) of this section, the attorney general may apply to the court for an order requiring the disclosure of the information, which shall be granted if found to be necessary and relevant.

[48-1507, added 2000, ch. 314, sec. 1, p. 1057.]

48-1508. CONTRACTS WITH AGENCIES AND CONSULTANTS -- REIMBURSEMENT FOR COSTS AND EXPENSES OF REVIEW -- FAILURE TO PAY. (1) Within the time periods designated in section [48-1504](#), Idaho Code, the attorney general may do any of the following to assist in the review of the proposed nonprofit hospital conversion transaction described in section [48-1503](#), Idaho Code:

(a) Contract with, consult, and receive advice from any agency of the state or the United States on such terms and conditions the attorney general deems appropriate; or

(b) In the attorney general's sole discretion, contract with such experts or consultants the attorney general deems appropriate to assist the attorney general in reviewing the proposed nonprofit hospital conversion transaction.

(2) Any costs incurred by the attorney general pursuant to this section shall not exceed an amount that is reasonable and necessary to conduct the review of the proposed nonprofit hospital conversion transaction. The attorney general shall be exempt from the provisions of any applicable state laws regarding public bidding procedures for purposes of entering into contracts pursuant to this section.

(3) The attorney general, after reviewing the nonprofit hospital conversion transaction, may submit a claim to the board of examiners for reimbursement of his reasonable costs and expenses incurred in reviewing the transaction. Upon submission of a claim from the attorney general, the board of examiners may authorize the issuance of deficiency warrants for the purpose of reimbursing the attorney general reasonable and actual costs, but not attorney's fees, associated with actions taken pursuant to this chapter. Deficiency warrants authorized by the board of examiners under this section shall not exceed one hundred thousand dollars (\$100,000) for reimbursement of all claims as a result of the attorney general's review of a transaction under this chapter. Upon authorization of deficiency warrants by the board of examiners in accordance with the provisions of this section, the state controller shall, after notice to the state treasurer, draw deficiency warrants in the authorized amounts against the general account.

[48-1508, added 2000, ch. 314, sec. 1, p. 1057.]

48-1509. PUBLIC RECORDS. All documents submitted to the attorney general by any person, including nonprofit hospital entities giving notice under section [48-1503](#), Idaho Code, in connection with the attorney general's review of the proposed nonprofit hospital conversion transaction pursuant to this chapter shall be deemed records contained in court files of judicial

proceedings, as provided for in section [74-104](#)(2), Idaho Code, and shall only be subject to public disclosure, pursuant to a public document request, in the same manner as set forth in that section.

[48-1509, added 2000, ch. 314, sec. 1, p. 1058; am. 2015, ch. 141, sec. 126, p. 474.]

48-1510. PENALTIES -- REMEDIES. (1) In his discretion, the attorney general may apply to the district court for an order voiding any nonprofit hospital conversion transaction entered into in violation of the notice and disclosure requirements of section [48-1503](#)(1), Idaho Code. Each member of the governing boards and the chief executive officers of the parties to the nonprofit hospital conversion transaction may be subject to a civil penalty of up to ten thousand dollars (\$10,000) for knowingly failing to notify the attorney general of the nonprofit hospital conversion transaction, or for violating the provisions of section [48-1511](#), Idaho Code, as applicable. The amount of any civil penalty shall be determined by the district court in the county in which the nonprofit hospital's assets to be transferred are located. No such penalty may be imposed under this section merely because the attorney general files suit under section [48-1504](#), Idaho Code, or because the district court enters an order that the nonprofit hospital conversion transaction at issue is not in the charitable trust interest. The attorney general shall institute proceedings to impose such a penalty.

(2) Nothing in this chapter shall be construed to limit the common law authority of the attorney general regarding charitable trusts and charitable assets in this state. The provisions of this chapter are in addition to, and not a replacement for, any other actions which the attorney general may take under either the common law or statutory law, including rescinding the nonprofit hospital conversion transaction, granting injunctive relief or any combination of these and other remedies available under common law or statutory law.

[48-1510, added 2000, ch. 314, sec. 1, p. 1058.]

48-1511. PRIVATE BENEFIT. No person who is an officer, director, board member or other fiduciary of a nonprofit hospital shall receive anything of value, beyond ordinary compensation, that relates to a nonprofit hospital conversion transaction described in this act and is of such a character as to have the appearance of an improper influence on the person with respect to the person's duties; provided however, that an officer or employee of the nonprofit hospital may accept a job with, perform duties for, and receive ordinary compensation from, the purchasing or converting entity. Any person who violates the provisions of this section shall, in addition to being subject to the provisions of section [48-1510](#), Idaho Code, forfeit the items of value received in violation of this section.

[48-1511, added 2000, ch. 314, sec. 1, p. 1059.]

48-1512. APPLICATION OF ACT. This act applies to all acquisitions, the consummation of which occurs after the effective date of this act.

[48-1512, added 2000, ch. 314, sec. 1, p. 1059.]